IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13681 of 2005
WITH
SPECIAL CIVIL APPLICATION No. 13682 of 2005
TO
SPECIAL CIVIL APPLICATION No. 13706 of 2005.

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEETABEN HIRALAL JARIWALA THRO.P.O.A. NARSIBHAI R SAVANI & 25 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RM CHHAYA for Petitioner(s) : 1 - 26.
MR. MR MENGDEY, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,
MR PRASHANT G DESAI for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/09/2005

CAV JUDGMENT

1.In these group of petitions the respective petitioners have approached before this Court at the stage when the

Town Planning Scheme is at present at the Draft Town Planning Scheme and have prayed for an appropriate writ, direction or order quashing and setting aside the provision of Town Planning Scheme No.33 (Dubhal), Surat qua the land alleged to be belonging to the petitioners being part of land bearing Survey Nos.5 and 6, Block No.6 of village Dubhal, Taluka Choryasi, District Surat, being Original Plot No.6, Final Plot Nos.6-A and 6-B, which according to the petitioners is part of the sanctioned scheme for housing for economically weaker sections sanctioned under Section 21(1) of the Urban Land (Ceiling & Regulations) Act, 1976. A further prayer is also made directing the respondent Nos.1 and 2 to consider the objections of the petitioners in accordance with law and further prayer is for declaration that the respondents are not authorized to make use of the land belonging to the petitioners unless and until the same is vested in appropriate authority under the Gujarat Town Planning and Urban Development Act, 1976.

2. It is the case of the petitioners that the land in question was originally forming part of a scheme for weaker sections under the provisions of the Urban Land (Ceiling & Regulations) Act, 1976 and the petitioners

are handed over the possession of the respective plots by the original land owner on the basis of the Scheme sanctioned under Section 21 of the Urban Land (Ceiling & Regulations) Act by different agreements/possession receipts. It appears that the land in question is forming part of Town Planning Scheme No.33 (Dubhal), Surat and the said Scheme is at present at the Draft Town Planning Scheme stage and the Town Planning Officer has sent the said Draft Town Planning Scheme to the State Government for its sanction and at that stage the petitioners have approached this Court to recognize their rights, if any, in the land in question. It is also the contention on behalf of the petitioners that though the said Scheme has not become final, the Municipality has started putting up the construction in the proposed final plot as if the scheme has become final and therefore, it is submitted and prayed for that the respondent authority cannot put up the construction.

3. In response to the notice issued by this Court Shri P.G.Desai, learned advocate appears on behalf of the respondent Nos.2 and 3 and Shri M.R.Mengdey, learned AGP appears on behalf of the respondent No.1-State Government. Shri P.G.Desai, learned advocate appearing

on behalf of respondent Nos.2 and 3 have submitted that the present Special Civil Applications at this stage, are premature and the Town Planning Officer has send the Draft Scheme to the State Government along with the suggestions and objections for its sanction and the Draft Scheme is at present with the State Government for its consideration and sanction. It is also further submitted that so far as the petitioners are concerned they do not have any valid title in the land in question. It is submitted that so far as the land in question is concerned, the original land owner through their Power of Attorney has already taken the possession of final plot No.6-A and 6-B and has handed over the possession to the Corporation, which is required to be handed over to them from their original holdings. It is also further submitted that in fact the some portion of the land from the original holdings of the original land owner is going under Town Planning Roads and some portion is reserved for Community Center and for public utility Center. It is also further submitted that so far as the Town Planning Roads are concerned, they are already constructed long back and at present the possession is already handed over by the original land owner, which is required to be handed over under the Town Planning Scheme, and therefore, the

Corporation has started constructing Zonal Office which is a public purpose and therefore, it is submitted that when the original land owner has handed over the possession and has no objection, the petitioners have no right to make any greivance. It is also further submitted that as such the petitioners have no valid title in their favour and as stated herein above the original land owner has handed over the land which is required to be handed over and have taken the possession of the land i.e. Final Plot No.6-A and 6-B which they are entitled to under the proposed Town Planning Scheme. He has also further submitted that the construction which is put up by the Corporation of Zonal Office is always subject to the sanctioning of final Town Planning Scheme and has submitted that if ultimately there is any change at the time of final Town Planning Scheme, the respondent Corporation may not claim equity and will have to abide by the sanctioned final Town Planning Scheme and therefore, it is requested to dismiss the present Special Civil Applications.

4. Shri M.R.Mengdey, learned AGP appearing on behalf of the respondent No.1 has submitted that at present, the Draft Scheme is submitted to the State Government along

with objections and suggestions and the same will be considered by the State Government in accordance with law and on merits considering the provisions of the Town Planning Act and has submitted that at this stage, the present Special Civil Applications filed by the petitioners are premature and the same may be dismissed accordingly.

5. Heard the learned advocates appearing on behalf of the parties.

6. In view of the fact that at present the Scheme is at Draft Town Planning Scheme stage and there are ample opportunities to the petitioners to submit objections and suggestions before sanctioning of the Draft Town Planning Scheme as well as final Town Planning Scheme and the State Government is bound to consider the same therefore, the present Special Civil Applications, at this stage, are not entertained. It is submitted that the petitioners have already made their suggestions and objections before the Town Planning Officer, and if that is so, the Town Planning Officer is bound to submit the same to the State Government at the time of sanctioning the Draft Town Planning Scheme. Still it will be open for the petitioners to submit fresh

objections before State Government within two weeks from today and the State Government is bound to consider the same in accordance with law and on merits before sanctioning the same. At this stage, Shri R.M.Chhaya, learned advocate appearing on behalf of the petitioners has submitted that the petitioners do not press the present Special Civil Applications at this stage with a liberty to approach the State Government and he also requested that it may be clarified that the construction, if any by the Surat Municipal Corporation herein would be subject to the final Town Planning Scheme. It goes without saying that the parties are bound to abide by the finalize Town Planning Scheme and even Shri Desai, learned advocate appearing on behalf of the Corporation has submitted that the Town Planning Authority as well as the Corporation is bound to abide by the finalized Town Planning Scheme and the construction would be subject to the finalized Town Planning Scheme and therefore, no further clarification is required.

7. With the above directions, the present Special Civil Applications are disposed of at this stage without expressing any opinion on merits of the case and without expressing any opinion with regard to the

rights of the petitioners, if any, in the land in question.

8.With the above observations and direction, notice in each petition, stands discharged.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.